IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2044 of 2002

Shri M.G. Gujar .. Petitioner

versus

Indian Institute of Packaging .. Respondents

...

Ms.A.P. Purav i/b V.P. Sawant for the petitioner.

Mr.R.V. Paranjpe for the respondents.

CORAM : D.G. KARNIK,J.

DATED : 18th July 2005.

ORAL JUDGEMENT:-

1. This Writ Petition is directed against the judgement and award dated 24th February 2002 passed by the Labour Court Bombay declining to set aside the order of dismissal of the petitioner from service.

2. The petitioner was employed as a driver of a staff car of the respondent no.1. On 20th July 1990 at about 9.30 p.m. after finishing the duty and parking the staff car in the premises of the respondent no.1, the petitioner was walking out of the main gate on the eastern side. At the gate, there was a quarrel between the petitioner and Mr.B.H. Jadhav, the watchman on duty. In the quarrel and scuffle that followed, window panes of the watchman's cabin were broken. Mr. Vaidya, the Secretary of the respondent no.1 visited the site and after on the spot assessment of the situation decided to suspend both the petitioner and the watchman Mr.Jadhav and they were orally told about the suspension. Despite the suspension, petitioner is alleged to have gone to the respondent's premises on 23rd July 1990 and was found loitering there. Though he was told to collect the suspension order, he did not collect the suspension order but came to the respondent's premises again on 26th July 1990 and clandestinely signed the muster roll for four days from 23rd to 26th July 1990. A charge-sheet was issued to the petitioner and a domestic enquiry was held. In the domestic enquiry, the petitioner was

found to be guilty and the services of the petitioner were terminated. Being aggrieved, the petitioner approached the labour authorities whereupon a reference under section 10 of the Industrial Disputed Act was made by the State Government. Two preliminary objections are raised by the respondent contending that the State Government was not appropriate government, for making of a reference and that the respondent's establishment was not an industry. By a part award dated 19th February 1998, both the contentions of the respondent were rejected and it was held that respondent was an industry and the State Government was the appropriate government for making of the reference. Thereafter, by further part award dated 23rd December 1998, the labour court held that the domestic enquiry was conducted in violation of the principles of natural justice and therefore finding of guilt in the domestic enquiry was vitiated. The labour court however permitted the respondent to adduce evidence before the labour court to justify the order of termination. The two part awards dated 19th February 1998 and 23rd December 1998 have become final and are not challenged by the respondent.

3. In view of the two part awards mentioned above, the parties adduced before the labour court their respective evidence. After considering the evidence adduced, the labour court came to the conclusion that the misconduct on the part of the petitioner was proved. It however held that the misconduct was not of a grave nature. It also held that there was no evidence of any past misconduct and therefore, the punishment of dismissal was disproportionate to the misconduct. Despite this finding, the labour Court declined to order the reinstatement on the ground that the relationship between the petitioner and the respondent was strained and therefore the case was an exception to the rule on ordering reinstatement where the punishment of dismissal was disproportionate to the misconduct. In lieu of reinstatement, the labour court awarded the compensation of Rs.75,200/- to be paid by the respondent to the petitioner on the basis of the judgement of the Supreme Court in O.P. Bhandari Vs. Indian Tourism Development Corporation ltd. reported in 1983(3) SCR 923. Being aggrieved by the order refusing the reinstatement, the petitioner has challenged the award by this Petition.

4. After having heard learned counsel for the parties, I am satisfied that the finding recorded by the Labour Court that the punishment was grossly disproportionate to the misconduct is a clearly correct finding. The charge against the petitioner was that he assaulted the watchman at 9.45 p.m. on 20th July 1990. There is no dispute that there was an altercation between the petitioner and the watchman. The issue however was whether the petitioner had first assaulted the watchman. According to the petitioner, it was the watchman who wrongfully held the collar of the petitioner alleging that the petitioner was stealing a bag of oil. The petitioner had offered proper explanation and it appears that the said explanation has also been accepted by the management because in the charge-sheet, there is no charge of theft or even an attempted theft of a bag of oil. The petitioner had stated that the bag was given to him by madam Dordi and Narayanan who were the superiors in the very presence of the watchman. In the reply dated 26th July 1990, the petitioner had specifically stated about the bag of the oil given by madam Dordi and Mr.Narayanan in the presence of the watchman and despite this, no charge was levelled against the

petitioner and no enquiry was held into the alleged theft or attempted theft or even unauthorised removal of the employer's property. Thus, what remains is only the charge of assault. There were contrary versions, one of the petitioner and another of the watchman. It is worthwhile to note that even the watchman was charge-sheeted for the incident of 20th July 1990 and even an enquiry was held against him. It appears that in the enquiry against the watchman, he was acquitted in the enquiry against the petitioner, he was held guilty. The enquiry against the petitioner is faulted for non-observance of the principles of natural justice. Evidence was adduced before the labour court and after considering the evidence the labour Court came to the conclusion that the petitioner was guilty. It further came to the conclusion that the punishment imposed was disproportionate to the misconduct. The labour court noted that there were no allegations of any prior misconduct. No perversity is shown in the said conclusion reached by the labour court and even that part of the order is not challenged by the respondent either by filing a separate Writ Petition or by filing any affidavit in reply before me. In the circumstances, the finding reached and recorded by

the labour court that the punishment was disproportionate to the misconduct has to be affirmed.

5. The labour court declined to order reinstatement of the petitioner only on the ground that the relationship between the petitioner and the management was strained. In my view, the observations made by the labour court between the petitioner and respondent were strained is without any evidence. In paragraph no.3 of its order, the labour court has noted :-

> "After completing the enquiry instead of awarding maximum punishment Institute thought of taking a lenient view with the workman on giving unconditional written apology by him. As he has not submitted the same, he was dismissed from the service."

. I have perused the copy of the letter dated 1st April 1991 written by the respondent to the petitioner which was filed in this Court in a compilation. The observation of the labour court extracted above is made on the basis of paragraph no.4 of the aforesaid letter dated 1st April 1991. By the said letter, the respondent stated that it would consider to take a lenient view in the matter provided

an unconditional apology expressing complete regrets came forward from the petitioner within three days of the receipt of the letter. This letter shows that the relationship between the petitioner and respondent was not so strained as to refuse the reinstatement atleast till 1st April 1991. The management on its own was willing to consider imposing a punishment short of dismissal till 1st April 1991. No further material has been brought on record to show that the relationship worsened after 1st April 1991. Thus, the relationship was not so strained as to refuse the reinstatement. There was nothing on record for the labour court to conclude that the relationship was strained. Even at the stage of hearing of the petition. Learned counsel for the respondent was unable to point out any material to indicate that the relationship was strained and no affidavit has been filed even in this court that the relationship between the petitioner and respondent no.1 is strained. In the circumstances, the labour Court erred on facts as well in law in rejecting the claim of reinstatement on the ground of strained relationship.

6. The next question is of back wages. Undoubtedly, the petitioner has been found to be

guilty and the said finding is not shown to be so erroneous as to render it to be perverse. In the circumstances, it would not be appropriate to award the full back wages to the petitioner. The petitioner has already been awarded a sum of Rs.75,200/- as compensation in lieu of reinstatement. That amount could be treated as a compensation in lieu of the back wages. The petitioner has been out of service from 1991 for a period of 14 years. The amount of Rs.75,200/- represents the wages of nearly 3.3 years which in my view would be appropriate compensation in lieu of back wages considering the fact that the petitioner has been found to be guilty of a misconduct, though not of a grave nature.

7. In the circumstances, the impugned order is set aside. The respondent is directed to reinstate the petitioner with continuity of service within a period of four weeks. The amount of Rs.75,000/- shall be treated as compensation in lieu of back wages upto the date of this judgement.

8. Rule is made absolute to the aforesaid extent.

D.G. KARNIK, J